THE HON'BLE MR JUSTICE B. SUDERSHAN REDDY

and

THE HON'BLE MR JUSTICE RAMESH RANGANATHAN

WRIT PETITION NO : 9166 of 2005

–

Dated 11.08..2005

Between:

D. Jaya Prakasa Rao, S/o. Nagabhushanam,
R/o. Autonagar, Vijayawada, Krishna District.

..... PETITIONER

AND

1 The Commercial Tax Officer, Benz Circle, Vijayawada,
Krishna District.
2 The Deputy Commissioner, No. II Division, Commercial Taxes,

Vijayawada, Krishna District.

.....RESPONDENT(S)

THE HON'BLE MR JUSTICE B. SUDERSHAN REDDY

and

THE HON'BLE MR JUSTICE RAMESH RANGANATHAN

WRIT PETITION NO : 9166 of 2005

ORDER: (per Sri BRSR,J)

This writ petition is directed against the proceedings in G.I No.6741 (Rc.No.2741) dated 6/4/2005 on the file of the 1st respondent-Commercial Tax Officer, Benz circle, Vijayawada whereunder he put the petitioner on notice requiring him to pay the tax

due under the provisions of the A.P. General Sales Tax Act, 1957 (for short the Act) in the following manner.

S.No. year APGST Tax due CST tax due

1. 1997-1998 Rs.1,03,333/-

2. 1998-1999 Rs.2,81,985/-

3. 1999-2000 Rs. 88,787/-

4. 2000-2001 Rs. 65,303/-

The contention of the petitioner is that the appeals preferred by him for the assessment years 1998-99; 1999-2000 were allowed by the appellate authority and thereafter no further orders as such have been passed by the 1st respondent and therefore the question of raising the demand as such does not arise. The sum and substance of the contention is that no such demand could have been raised by the 1st respondent pursuant to an order of assessment, which has been set aside by the appellate authority and remitted the matter for fresh consideration by the assessing authority. This statement of the petitioner in the affidavit is not really put in issue by the respondents. In the counter affidavit filed by the 1st respondent it is stated that the 1st respondent has now passed orders after considering the objections filed by the dealer for the years 1998-99 and 1999-2000. It is thus clear that the 1st respondent has passed the consequential orders only after the petitioner had filed the present writ petition and therefore no demand as such could have been raised even before passing the consequential orders pursuant to the order of remand by the appellate authority. The demand notice, so far as it concerns, for the years 1998-99 and 1999-2000 is accordingly quashed. The petitioner will be at liberty to challenge the consequential orders stated to have been passed by the 1st respondent and likewise the 1st respondent also shall be at liberty to proceed against the petitioner for realization of the tax, if any, due provided there are no legal impediments for realization of such taxes from the petitioner.

That so far as the tax for the year 1997-98 is concerned, the proceedings disclose that the petitioner in fact paid excess tax for the years 1997-98 and that apart

preferred an appeal which is pending before the sales tax appellate tribunal. It is however brought to our notice that the revisional authority revised the assessment order for the year 1997-98 and found that some tax is still liable to be paid by the petitioner. The 1st respondent shall be at liberty to give effect to the orders passed by the revisional authority provided there are no orders passed by any competent authority interdicting him to proceed further in the matter. We cannot grant any relief in this writ petition insofar as the assessment for the years 1997-98 is concerned.

So far as the tax for the years 2000-2001 is concerned, the demand for a sum of Rs.65,303/- cannot be enforced since the proceedings are pending with the assessing authority. This position is squarely conceded to in the counter filed by the respondent.

For the aforesaid reasons, this writ petition is disposed of directing the respondents herein not to proceed against the petitioner for realization of any tax so far as the assessment year 2000-2001 is concerned.

In the result, the impugned demand notice is quashed and liberty is given to the respondents herein to proceed further in the matter in the light of the observations made in this order.

(B.SUDERSHAN REDDY,J)

dated 11.08..2005

(RAMESH RANGANATHAN,J)

msv